IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 82 OF 1999

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation Ltd., Amey Guest House,
Davorlim Road, P.O. Navelim,
Salcete, Goa,403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao Railway
Station, Margao, Goa. ... Appellants

Versus

1. Smt. Celia Pereira,
r/o H.N. AF-1,
Laximi Housing Society,
Comba, Margao, Goa,

2. Shri Antonio P.M. Furtado,
r/o H.N. AF-1,
Laximi Housing Society,
Comba, Margao, Goa. ... Respondents.

Mr. E. Afonso, advocate for the appellants.

Mr. Shivan Dessai, advocate for the respondents.

CORAM : P. V. HARDAS, J.

DATE : 20th August, 2004.

ORAL JUDGMENT

The appellants being aggrieved by the Award passed by Additional District Judge, South Goa, Margao, in Land Acquisition Case No.390/95 dated 29th January, 1999, enhancing the compensation from Rs.4/- per sq. mt. to Rs. 76/- per sq. mt., have filed the present appeal.

2. The facts in brief as are necessary for the decision of this Court can be stated thus:-

A notification bearing No.22/168/91-RD dated 30th September, 1991, came to be issued under Section 4 of the Land Acquisition Act, 1894, which was published in the Official Gazette dated 24th October, 1991. The land that was acquired was from village Cortalim of Mormugao Taluka. The acquisition was by the Konkan Railway Corporation for construction of the new broad gauge line for the Konkan Railway. The acquired land admeasures 1825 sq. mts. And was from survey no.14/8 belonging to the respondents herein. The Special Land Acquisition Officer by his Award dated 24th January, 1995 granted Rs.4/- per sq. mt. to the respondents/owners. The respondents were paid separately an amount of Rs.47,160/- towards the fruit value and Rs.3,191.60 p. towards the wood value of the trees. The respondents being aggrieved by the Award of the Special Land Acquisition Officer, filed an application under Section 18 of the Land Acquisition Act, for a reference to be made under the said provision. The respondents/owners claimed Rs.500/- per sq. mt. as the market rate for the area of the land acquired for the construction of the broad gauge line of the Konkan Railway.

3. On a reference being made, the Reference Court framed an issue whether the respondents/applicants in the reference, proved that the market price of the land acquired was Rs.200/- per sq. mt. to Rs.500/- per sq. mt., on the date of the publication of the Notification under Section 4 of the Land Acquisition Act.

4. In order to establish the case that the rate of the land acquired was more than Rs.4/- per sq. mt. and was ranging between Rs.200/- to Rs.500/- per sq. mt., the respondents examined as A.W.1, Antonio Furtado, who is respondent no.2 in the Appeal and the original applicant no.2 before the Reference Court. A.W.1, Antonio Furtado, had produced the documents in respect of his title to the land and he further stated that earlier the Public Works Department had acquired land from the same property in March, 1971, for the purpose of construction of National Highway No.17. On a reference being made, the Reference Court by its Award dated 28th July, 1988 had enhanced the rate to Rs.25/- per sq. mt., for the eastern plot and Rs.30/- per sq. mt., for the western plot. The Award passed in respect of the acquisition of the land for the purpose of construction of National Highway No.17 is at Exh.A.W.1/D. In the cross-examination A.W.1, Antonio Furtado, has admitted that the acquired land lies in tourism zone. Further he has stated that he had not checked as to what is the increase in the rate of such land every year, but he had checked that in respect of tourism land every year there was an increase of more than 10%. He has further stated that the acquired land is superior to the land which was the subject-matter of an earlier acquisition. He has denied the suggestion that the land acquired under the present Notification was not comparable with the land acquired by virtue of the earlier Notification.

5. The Reference Court while deciding the reference has relied broadly upon the Award passed in the earlier acquisition proceedings at Exh. A.W.1/D. The Reference Court found that in respect of the acquisition in the year 1971, the present respondents had been awarded compensation at the rate of Rs.4/- per sq. mt., which was enhanced by the

Reference Court vide Award at Exh.A.W.1/D. The Reference Court also found that on perusal of the site plan the land acquired under the present Notification is adjacent to the land previously acquired and is on the eastern side and both the lands, i.e. the land acquired under the present Notification and the land acquired earlier, were part of the same property, which is a mixed garden land. The Reference Court further found that in the earlier acquisition proceedings the Reference Court by its Award had increased the rate from Rs.4/- per sq. mt. to Rs.25/- per sq. mt. and the date of issuance of the Section 4 Notification in the earlier acquisition proceedings was 17th March, 1991. Since more than 20 years had passed between the earlier acquisition and the present acquisition and taking into consideration that the market value of the land would reasonably be expected to increase by 10% every year, the Reference Court awarded compensation at the rate of Rs.76/- per sq. mt.

6. Mr. Afonso, learned counsel appearing on behalf of the appellants, has urged before me that the land which is acquired under the present Notification, undisputedly, is adjacent to the National Highway No.17 and by virtue of the fact that the land is adjacent to the National Highway No.17, no development is possible, as a set back of nearly 40 meters is required to be maintained. It is, therefore, urged by Mr. Afonso, learned counsel for the appellants, that the Reference Court was in error in holding that the market value of the land was Rs.76/- per sq. mt. The prohibition in respect of development is only in respect of maintaining a set back of 40 meters when the land abuts the National Highway. There is no total prohibition or ban in respect of the development of the property. Therefore,

this submission of the learned counsel for the appellants, according to me, is wholly unmerited. In fact, the situation of the land that it is adjacent to the National Highway would be a feature that would enhance the market the market value of the land, rather than diminish the market value of the land.

7. It is next urged by Mr. Afonso, learned counsel for the appellants, that the land which is acquired under the present Notification is a land which is part of a hillock and is not a plain or a flat land. It was, therefore, urged that the market value applicable to flat or plain land cannot be made applicable to a land which is a part of a hillock. Mr. Dessai, learned counsel appearing on behalf of the respondents/claimants has invited my attention to the observations of the Special Land Acquisition Officer recorded by him in his Award. The Special Land Acquisition Officer in his Award has come to the conclusion that the land acquired under the present Notification comprises of low-lying land which required filling up before it could be used for the construction of the bridge by the Konkan Railway Corporation. Even otherwise, there is absolutely no evidence tendered on behalf of the appellants that the area of the land which is acquired under the present Notification , is a part of a hillock. In fact, no suggestion to this effect is at all given to A.W.1, Antonio Furtado, and therefore this submission of the learned counsel for the appellants also, according to me, is not well merited.

8. I have given my anxious consideration to the evidence on record and the submissions advanced by the learned counsel for the parties and, according to me, there is no error committed by the Reference Court in

enhancing the compensation to Rs.76/- per sq. mt.

9. According to me, therefore, the present Appeal is sans merit and deserves to be dismissed. Accordingly, First Appeal No.82/99 is dismissed. However, in the circumstances, there shall be no order as to costs.

P. V. HARDAS, J.

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